



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** International Television Productions  
**File:** B-233147  
**Date:** December 29, 1988

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### **DIGEST**

1. Protester's contention that the contracting agency improperly evaluated its technical proposal is denied where the record clearly indicates that the protester's proposal was evaluated in accordance with the evaluation criteria in the solicitation.
2. Contention that contracting agency improperly made award under request for proposals (RFP) to a higher priced, higher rated offeror is without merit since there is no requirement to make award in a negotiated procurement on the basis of price where the RFP does not so provide and since protester's lower-priced offer was not in the competitive range and therefore ineligible for award.
3. Protest that the contracting agency acted in bad faith by failing to award a contract for videotape production to the protester on the basis of a videotape that was previously judged acceptable, thereby entitling protester to be placed on a Qualified Producers List, is without merit because inclusion on the list merely entitles the protester to receive copies of solicitations, not contract award.

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### **DECISION**

International Television Productions (ITP) protests the award of a firm, fixed-price contract to Filmgroup, Inc. under request for proposals (RFP) No. DAEO8-88-R-5017, issued by the Department of the Army Joint Visual Information Activity (JVIA) for a videotape production entitled "German Basic Course." The tape will be used to provide language instruction to Department of Defense (DOD) personnel assigned to various duties in Germany and other German-speaking countries. ITP contends that its technical proposal was unfairly evaluated, that the agency improperly awarded the contract to a higher priced offeror, and acted in bad faith by not awarding the contract to its firm.

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We deny the protest.

The RFP required the submission of a technical proposal which included, for key personnel, resumes describing specialized education, experience and awards. The RFP also required the submission of a sample television program produced by the offeror. The evaluation factors and subfactors, with their respective weights, were as follows:

"a. Qualifications and relevant experience of proposed production team members. 30%

- (1) Experience
- (2) Education
- (3) Awards

b. Creativity, as demonstrated in sample production. 50%

- (1) How well did the sample convey the information or ideas stated in the purpose statement?
- (2) Was an imaginative approach utilized? Were video special effects creatively employed?
- (3) Overall impression as a professional product.

c. Technical quality of sample production. 20%

- (1) Direction
- (2) Editing: Visual Selection, Pace, Music, Use of Special Effects
- (3) Photography: Lighting, Composition, Stability of Colors
- (4) Involvement of proposed team members in sample production."

With respect to contract award, the RFP advised offerors that price was slightly less important than technical factors; that the government reserved the right to make award to other than the lowest priced, technically acceptable offeror; and that the contracting officer would select for award the proposal which offered the greatest value to the government, price and other factors considered.

Sixteen proposals were submitted in response to the RFP. Two were immediately rejected as unreasonably high in price. The technical scores for the 14 remaining proposals ranged from 34.7 to 83.7 points out of a possible total of 100

points; the prices ranged from \$213,968 to \$734,433. Filmgroup submitted the lowest priced proposal and received the highest technical score. The protester's proposal was fifth lowest in price and tenth of 14 in technical points with a score of 41.74 points.

The agency then calculated a greatest value score for each offeror based on a 55/45 technical to cost ratio. Three offerors whose greatest value scores were 63.7 or above were included in the competitive range. The awardee's score was 91. The protester, ranked sixth overall in greatest value with a score of 55.3, was not included in the competitive range.

After discussions were held with the three offerors in the competitive range, best and final offers (BAFOs) were submitted. All three offerors raised their prices. Contract award was made to Filmgroup at the firm's BAFO price of \$339,678.

ITP contends that the evaluation of technical proposals could not have been conducted in accordance with the stated criteria because JVIA failed to consider the resumes of ITP's proposed production crew, and its sample video has won many awards and greatly pleased the client for which it was produced.

In response, JVIA states that, contrary to a statement made to ITP during its debriefing, the protester's resumes were fully considered in the evaluation of ITP's technical proposal as shown on the individual evaluators' score sheets. Additionally, with regard to the protester's film sample, the agency states that the JVIA Audiovisual production specialists who reviewed the samples are experts in the evaluation of video tapes and motion pictures and look for "broadcast quality" in JVIA productions. Using this quality standard, the agency notes, it was the unanimous opinion of the technical evaluation panel members that the protester's sample, evaluated in accordance with the stated criteria, compared only marginally with the other offerors.

In reviewing protests concerning the evaluation of proposals, our function is not to reevaluate the proposal to make our own determination about its merits. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Procuring officials have a reasonable degree of discretion in evaluating proposals, and our examination is limited to

determining whether the agency's evaluation had a reasonable basis. Kay and Assocs., Inc. et al., B-229850 et al., Apr. 4, 1988, 88-1 CPD ¶ 337.

In this regard, the record indicates that the resumes of ITP's proposed production team members were evaluated and scored on the basis of the three elements under factor a., experience, education and awards. The resumes were deemed "almost unacceptable" and received an average of 17.07 points out of a total possible 30 points, based principally on the production staff's limited experience and the lack of detailed information regarding the experience they did have. The record supports the evaluators' assessment of the resumes. For example, the employment experience of the camera operator and director consisted of 3 and 4 years, respectively, with ITP; their resumes contain little or no description of their duties and accomplishments. The proposed sound recorder's resume indicated he had 8 years of experience in various positions (videographer/editor, news photographer/editor, television correspondent and production) but did not clearly indicate whether he had any experience as a sound technician. In comparison, the resumes submitted by the awardee were lengthy and detailed, containing, for example, a narrative explanation of the director's credentials and how his experience with other productions relates to the work called for under the RFP.

With respect to ITP's sample video, the evaluators' score sheets indicate that under the creativity factor it received an average score of 15 points out of a possible 50 points because the evaluators found that the video was boring, showing no imagination and little creativity. With regard to the third evaluation factor, technical quality, the sample video received an average score of 9.67 out of 20 possible points because the evaluators found that the sample was average with poor pacing. ITP challenges the evaluation of its sample on the basis that the client for which it was produced was very pleased with it. We fail to see how the client's reaction has any bearing on the reasonableness of the JVIA evaluators' assessment of the sample against the evaluation criteria in the RFP.

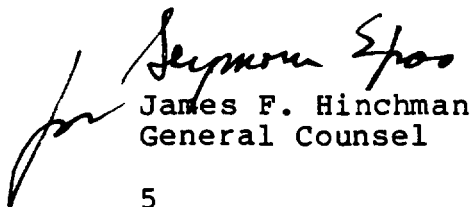
Based on our review of the record, we find that JVIA's evaluation of ITP's proposal was reasonable and in accordance with the evaluation criteria in the RFP. While ITP disputes the evaluation generally, a protester's mere disagreement with the agency's evaluation does not render the evaluation unreasonable or contrary to law. Id.

The protester also contends that the contract award to Filmgroup was improper because ITP's proposal was 12.5

percent lower in price. This argument is without merit. First of all, in a negotiated procurement, there is no requirement that award be made based on price unless the RFP provides that price is the determinative factor. In the absence of such an express provision, the government retains the right to select a higher priced but higher rated proposal if doing so is in the government's interest and consistent with the evaluation scheme. Ray Camp, Inc., B-221004, Feb. 27, 1986, 86-1 CPD ¶ 205. Here, the RFP states that price was slightly less important than technical considerations and provided that award would be made to the offeror representing the greatest value to the government. In addition, the RFP specifically reserved JVIA's right to select other than the lowest priced, technically acceptable offer. Accordingly, there was no requirement that JVIA make award on the basis of price. Secondly, and more directly relevant here, ITP was not included in the competitive range, primarily because of its relatively poor rating in the technical area. Since ITP was not in the competitive range, its initial proposed price simply is not relevant to the selection of an offeror who was in the competitive range--ITP was not eligible for award regardless of its price. Fairfield Machine Co., Inc., B-228015 et al., Dec. 7, 1987, 87-2 CPD ¶ 562; Proffitt and Fowler, B-219917, Nov. 19, 1985, 85-2 CPD ¶ 566. Also, we point out that while ITP's initial price was lower than Filmgroup's award price, the BAFO price from another offeror who was in the competitive range was lower than ITP's price. Thus, ITP's concerns regarding price provide no basis for us to object to the award.

Finally, the protester contends that JVIA acted in bad faith by not awarding it the contract in view of the fact its sample videotape had been judged acceptable by the DOD Federal Audiovisual Contract Management Office. The "acceptable" determination referred to by ITP does not entitle the firm to contract award. By submitting an acceptable videotape, ITP merely became eligible for inclusion on the Qualified Producers List and entitled to receive solicitations for proposed motion picture and videotape productions. Accordingly, ITP's allegation of bad faith is clearly without basis.

The protest is denied.

  
James F. Hinchman  
General Counsel